UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES BAER	)	
	)	**Case No. 4:07cv396TIA**
Plaintiff,	)	
	)	
vs.	)	
	)	
CREATIVE PRODUCERS, INC.	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO COMPEL DISCOVERY

Defendant, Creative Producers, Inc., by and through its attorneys of record, pursuant to Rule 37 of the Federal Rules of Civil Procedure, moves this Honorable Court for an order compelling Plaintiff, James Baer, to adequately respond to Defendant's written discovery requests and, in support thereof, states as follows:

1. On or about July 11, 2007, Defendant served its First Set of Interrogatories and First Set of Requests for Production of Documents to Plaintiff, James Baer. Defendant's Interrogatories Directed to Plaintiff are attached as Exhibit "A" and Defendant's First Requests for Production of Documents, are attached as Exhibit "B".

2. On August 2, 2007, Plaintiff served his Answers to Interrogatories and Response to Defendant's First Request for Production. (These documents are attached hereto as Exhibits "C" and "D", respectively).

3. Six (6) of Plaintiff's Answers to Interrogatories and two (2) of Plaintiff's Responses to the Request for Production are deficient, as outlined below.

4. This Court should order Plaintiff to completely and properly respond to these discovery requests and no good cause exists for Plaintiff's failure to do so.

5. In accordance with Local Rule 37-3.04, Defendant's counsel attempted to confer with counsel for Plaintiff to discuss, in good faith, Plaintiff's failure to adequately respond to the foregoing discovery requests. See August 13, 2007, letter and email correspondence from Defendant's counsel to Plaintiff's counsel, attached hereto as Exhibits "E" and "F", respectively. Plaintiff's counsel failed to respond to either the letter or e-mail.

Interrogatories

6. Plaintiff's first failure to completely respond to Defendant's Interrogatories is as to Interrogatory number 5, which provides, along with his answer:

> **5. For each skill listed in the preceding interrogatory, please:**
>
> **a. State how and when you acquired it;**
>
> **b. State your level of competence in it; and**
>
> **c. List all licenses, diplomas or certificates that indicate your competence in or are otherwise related to the skill.**
>
> ANSWER: **Sales at Laser Vision Centers; sold and serviced 50+ accounts; 4 years of billings in excess of $2.5 Million Dollars.**

See, Exhibits A and C. The "preceding interrogatory" (number 4) requested Plaintiff to list all job-related skills that he has acquired in his educational and employment experience. Plaintiff answered "sales, marketing, public relations, writing, contract negotiations, broadcasting." Interrogatory number 5 requests Plaintiff to identify how he acquired each of these skills and when, his level of competence and any licenses, diplomas or certificates he has received. His answer, with respect to a single prior employer, Laser Vision Centers, and his sales record there does not completely respond to this interrogatory.

7. Such information is highly relevant to this alleged employment discrimination case especially in light of the fact that Plaintiff's skills and abilities are relevant to his termination as Defendant's employee. (See Complaint, attached hereto as Exhibit G.) Plaintiff's failure to completely answer this interrogatory constitutes a failure to answer. F.R.C.P. 37(a)(3).

8. Next, Plaintiff failed to completely answer Interrogatory number 12, which provides, together with his answer:

> **12. Please fully identify each person, or the class of persons, who you allege or contend was similarly situated to you, and who was treated more favorably than you. For each such person, or class of persons, state:**
>
> **a. the job title(s) of the person(s), or class of person, you claim were similarly situated;**
> **b. the basis on which you claim he/she/it was similarly situated to you;**
> **c. specifically, how such person(s), or class of persons, was treated more favorably than you; and**
> **d. the age of each such person, or if you identify a class of persons, the names and ages of each member of the class.**
>
> ANSWER: **Patrick McCullough, previous sales associate; less than age 40.**

See Exhibits A and C. Plaintiff has completely failed to respond to subparts (b) and (c) of this interrogatory, which goes to the heart of his claim for age discrimination. Plaintiff's failure to completely answer this interrogatory constitutes a failure to answer. F.R.C.P. 37(a)(3). Plaintiff should be compelled to fully answer this interrogatory.

9. Next, Plaintiff has completely failed to answer Interrogatory number 13 and no objection thereto has been asserted. Plaintiff should be ordered to answer the following:

> **13. Please state, with specificity, the basis for and amount of all damages which you claim to have suffered as the result of the alleged discrimination against you by Creative Producers Group, including, but not limited to, lost wages, damages for emotional**

> **distress, legal expenses, and court costs. For any claimed lost wages, state the dates and the weekly or monthly amount of lost wages claimed by you.**

ANSWER:

See Exhibits A and C. Such Interrogatory is plainly relevant and must be answered.

10. As for the next two interrogatories, numbers 14 and 17, it appears that Plaintiff has not objected to either interrogatory, but he has again failed to completely respond thereto. It appears that something occurred in word processing, so it is difficult to decipher whether there is more to each answer. Each interrogatory and Plaintiff's partial answers follow:

> **14. Please state the name, address and job title of each employee of Defendant who you allege or contend discriminated against you and state, with specificity, what acts you allege each such person engaged in which were motivated by discriminatory animus and the date(s) on which each such act occurred.**

ANSWER: **Keith Alper & Creative Producers**

> **17. State, in detail, all efforts you have undertaken to find employment since termination from your job at Creative Producers Group, including identifying for each position for which you have applied, the date of the application, the name of the potential employer, job title, and whether an offer of employment was made to you.**

ANSWER: **Applied for hundreds of jobs**

See Exhibits A and C. Again, Plaintiff's failure to completely answer each interrogatory constitutes a failure to answer. F.R.C.P. 37(a)(3). Plaintiff should be ordered to completely respond to each interrogatory.

11. As for Interrogatory number 15, again Plaintiff fails to completely respond, as illustrated below:

> **15. Do you allege or contend that you suffered or incurred mental disturbance or emotional distress as a result of alleged**

discrimination by the Defendant? Unless your answer is an unqualified "no", please state:

a. each and every symptom of such emotional distress;

b. the name(s) of anyone who has knowledge of such emotional distress and/or symptoms;

c. whether you have received treatment for such emotional distress and, if so, identify each medical doctor, psychiatrist, psychologist, licensed clinical social worker, licensed social worker, or other mental health professional, who has provided such treatment, any prognosis and/or diagnosis and received by you; and

d. whether you had, prior to the alleged discrimination by Defendant, received treatment for any type of mental disturbance or emotional distress for which you sought or received treatment and, if so, identify each medical doctor, psychiatrist, psychologist, licensed clinical social worker, licensed social worker, or other mental health professional, who provided such treatment, any prognosis and/or diagnosis received by you, and the date(s) of treatment.

ANSWER: Emotional distress. Worries about paying bills and meeting financial obligations. Plenty of sleepless nights for more than a year.

See Exhibits A and C. Plaintiff has again failed to answer each subpart to this interrogatory, specifically, (b), (c) and (d). In that Plaintiff is claiming that he has suffered emotional distress, pain and suffering, embarrassment, humiliation and loss of enjoyment of life, such information is highly relevant and should be answered. Plaintiff's failure to completely answer this interrogatory constitutes a failure to answer pursuant to Federal Rule 37(a)(3).

Requests for Production

12. First, with respect to Request No. 9, which provides as follows, Plaintiff states he has attached a medical authorization:

9. If you claim to have received medical treatment or counseling for mental disturbance and/or emotional distress in response to Interrogatory #16 of Defendant's First Set of Interrogatories Directed to Plaintiff, then please provide an executed medical authorization for release of all records of such medical treatment or counseling, in the form attached hereto as Exhibit "A".

ATTACHED.

See Exhibits B and D. Plaintiff has failed to attach the medical authorization as indicated. Such response must be compelled by this Court as Plaintiff's medical information is relevant.

13. Second, as for Request number 14, which provides, together with Plaintiff's response:

14. Any and all documents that relate to your salary or wages from any work you have performed for any other employer since your termination from Creative Producers Group.

NONE.

See Exhibits B and D. Such response is highly suspect in that Plaintiff has attached to his Answers to Interrogatories (Exhibit A) a resume which indicates that he ha been employed by Hancock Place School District as the Director of Communications & Marketing since April, 2006. Some one has handwritten on that document notations about pay rate. Next to this entry appears to be "$20 per HR". Such document suggests that Plaintiff would have some document – particularly a W-2 from 2006 and check stubs – showing his salary or wages at such subsequent employment. Plaintiff should be compelled to provide responsive documents in his possession.

14. Defendant's Memorandum in Support of its Motion to Compel Discovery is filed contemporaneously herewith and incorporated herein in its entirety.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order compelling Plaintiff to provide complete responses to Defendant's written discovery requests within ten (10) days, and for such further relief as this Court deems just and proper under the circumstances.

DANNA MCKITRICK, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2007, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Jerry Crowder, Esq.
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720 Olive Street, Suite 1800
St. Louis, MO 63101-2302

/s/ Laura Gerdes Long

166-58276: Creative Producers Group, Inc./Baer, James F.: 214097.wpd